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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MY HOME NOW, LLC, a Nevada Limited
Liability Company,

CASE NO.: 2:16-cv-00727-GMN-NJK

Plaintiff,

vs.

JP MORGAN CHASE BANK, N.A. and
National Banking Corporation; U.S. BANK
TRUST, N.A. AS TRUSTEE FOR LSF9
MASTER PARTICIPATION TRUST, and
National Banking Corporation.

Defendant.



MOTION FOR SUMMARY JUDGMENT ON

PLAINTIFF'S SECOND AMENDED COMPLAINT [ECF#59]

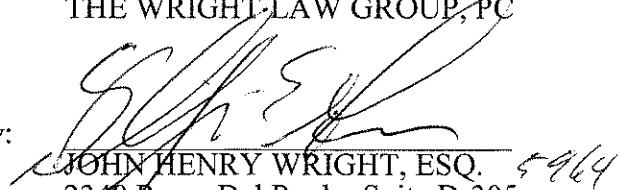
21 COMES NOW Plaintiff, MY HOME NOW, LLC, by and through their attorney, John
22 Henry Wright, Esq., of THE WRIGHT LAW GROUP, P.C., and hereby tenders Plaintiff's Motion
23 for Summary Judgment on Plaintiff's Second Amended Complaint [#59], pursuant to Fed. R. Civ.
24 P. 56 and D. Nev. R. 56-1, against Defendants, JP MORGAN CHASE BANK, N.A., U.S. BANK
25 TRUST N.A., as trustee for LSF9 Master Participation Trust, and CALIBER HOME LOANS, INC.
26 This Motion is made and based upon the pleadings and papers on file, the attached exhibits, and
27 any oral argument the Court elects to entertain.

1 DATED this 29th day of March, 2016.

2 THE WRIGHT LAW GROUP, P.C.
3
4

5 By:
6

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8 2340 Paseo Del Prado, Suite D-305
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10 Attorneys for Plaintiff
11 MY HOME NOW, LLC
12



5964

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 I. INTRODUCTION

15 This case is the second iteration of a foreclosure matter, which first arose in 2014. The case
16 involves property purchased in 2014, at a non-judicial foreclosure sale, by Plaintiff, My Home
17 Now, LLC ("My Home Now", "buyer"). The foreclosure sale occurred following the original
18 owner's default on delinquent homeowner's association assessments.

19 In October, 2014, the buyer filed a quiet title action against J.P. Morgan Chase Bank, N.A.
20 and unnamed Does and Roes, in the Clark County District Court, Case No. A-14-708130-C, *My*
21 *Home Now, LLC v. JP Morgan Chase, N.A.* The Complaint asserted three (3) claims for relief: 1)
22 Declaratory Relief/Quiet Title (NRS 30.010, et seq., NRS 40.10 & NRS 116.3116), 2) Unjust
23 Enrichment and 3) Preliminary and Permanent Injunction. The case was transferred to the U.S.
24 District Court on a removal motion filed by Defendant, J.P. Morgan Chase Bank, N.A. ("Chase"),
25 Case No. 2:14-cv-01958-APG-NJK ("first iteration case", "Glowing Ember #1"). Glowing Ember
26 #1 resolved the quiet title action in favor of My Home Now and against all other entities.

27 Prior to the 2014 foreclosure sale, Chase, held the only other recorded interest in 7555
28 Glowing Ember Court, Unit 101, which it received by assignment in or about September of 2013.
29 Prior the foreclosure sale and the first iteration quite title action, Chase was the sole recorded
30 holder of an interest under the original Deed of Trust, which had been executed and recorded in
31 2008 ("subject Deed of Trust").

32 On or about February 9, 2015, Chase **executed** a Disclaimer of Interest, which was filed
33 in Glowing Ember #1, on or about February 9, 2015. On or about June 2, 2015, a Stipulation and



1 Order Dismissing Chase was filed dismissing any and all claims as to Chase, **with prejudice based**
 2 **upon this Disclaimer of Interest.** A default judgment was entered against the remaining
 3 defendant, an individual, and the case was closed on or about November 25, 2015.

4 In July, 2015, approximately five (5) months after entering into the stipulation of dismissal
 5 “disclaim[ing] any interest in the subject property”, Chase **recorded a purported assignment**, to
 6 the Secretary of Housing and Urban Development (“HUD”). Notwithstanding having disclaimed
 7 any interest in 7555 Glowing Ember Court, Unit 101, the assignment to HUD purported to transfer
 8 Chase’s “beneficial interest”, under the subject Deed of Trust. In August, 2015, HUD recorded a
 9 **purported assignment** to Defendant U.S. Bank Trust, N.A., as Trustee for LSF9 Master
 10 Participation Trust (“U.S. Bank’). These post-disclaimer assignments by Chase to HUD and by
 11 HUD to U.S. Bank created clouds on My Home Now’s title to the subject real property, which
 12 Chase refused to remove, requiring court intervention.

13 On or about March 11, 2016, My Home filed a First Amended Complaint for Quiet Title
 14 and Declaratory Relief in the Clark County District Court, Case No. A-16-732107-C, *My Home*
 15 *Now, LLC v. JP Morgan Chase, N.A. et al.* This second iteration case, which is the case at bar,
 16 named Defendants, U.S. Bank and CALIBER HOME LOANS, INC. (“Caliber”), U.S. Bank’s
 17 servicing agent, as additional party defendants. The case was transferred to the U.S. District Court
 18 on a removal motion filed by Chase. Thus, the instant case, No. 2:16-cv-00727-GMN-NJK
 19 (“Glowing Ember #2”) became the second iteration of the foreclosure matter.

20 **II. PROCEDURAL BACKGROUND**

21 **A. My Home Now’s First Amended Complaint**

22 On March 11, 2016, My Home Now filed it’s First Amended Complaint for Quiet Title and
 23 Declaratory Relief (“Amended Complaint”) against Chase, U.S. Bank and Caliber. The Amended
 24 Complaint asserted four (4) claims for relief: 1) Declaratory Relief/Quiet Title, Pursuant to NRS
 25 30.010, et seq., NRS 40.10 & NRS 116.3116, as to all named Defendants; 2) Slander of Title, as
 26 to all named Defendants; 3) Breach of Contract, as to Chase; and 4) Attorneys’ Fees, as to all
 27 named Defendants. (Exhibit 10).

28 On or about April 26, 2016, Chase filed a Motion to Dismiss (ECF No. 8) in lieu of filing



1 a responsive pleading. On or about April 29, 2016, My Home Now filed its Opposition to Chase's
 2 Motion to Dismiss (ECF No.. 9). On or about May 5, 2016, Chase filed Chase's Reply in Further
 3 Support of its Motion Dismiss (ECF No. 13).

4 On about May 13, 2016, U.S. Bank and Caliber filed Answers to Plaintiff's First Amended
 5 Complaint for Quiet Title and Declaratory Relief; and U.S. Bank filed a Counterclaim (ECF No.
 6 14). On July 26, 2016, My Home Now filed its Motion for Summary (ECF No. 29). On September
 7 28, 2016, Chase filed its Cross-Motion for Summary Judgment (ECF No. 37).

8 On February 15, 2017, the Court granted Chase's Motion to Dismiss in part, dismissing
 9 Plaintiff's quiet title claim with prejudice. The Court dismissed Plaintiff's slander of title and
 10 breach of contract claims without prejudice and granted Plaintiff leave to file a second amended
 11 complaint until February 27, 2017. [ECF#58]

B. My Home Now's Second Amended Complaint

13 On February 27, 2017, Plaintiff filed its Second Amended Complaint (ECF No. 59). On
 14 March 16, 2017, U.S. Bank and Caliber filed their Answer to Plaintiff's Second Amended
 15 Complaint for Quite Title and Declaratory Relief (ECF No. 65). On March 22, 2017, Chase filed
 16 its' Answer to the Second Amended Complaint for Quiet Title and Declaratory Relief (ECF No.
 17 66). My Home Now files the instant Motion for Summary Judgment, as to each of the claims
 18 averred in the Second Amended Complaint, as set forth against U.S. Bank and Caliber, on the
 19 First, Third and Fourth Claims for Relief; and as set forth against Chase, on the Second, Third and
 20 Fourth Claims for Relief in the Second Amended Complaint.

III. STATEMENT OF THE FACTS

22 1. CALIBER and U.S. Bank, claim their interest in the Property under the subject
 23 Deed of Trust, subject to purported assignments from Chase to HUD and from HUD to U.S. Bank.

24 2. On or about September 19, 2013, Metlife Bank, National Association, also known
 25 as Metlife Home Loans, a division of Metlife Bank, N.A., by Select Porfolio Servicing, Inc., its
 26 Attorney in Fact, assigned its interest, in the subject Deed of Trust to Defendant, JP Morgan Chase,
 27 N.A., and the assignment was duly recorded in the Official Records the Clark County Recorder,
 28 pursuant to Instrument No. 20130909:2057. (Exhibit 1).

1 3. On or about July 31, 2015, after disclaiming "all legal and equitable interest" the
 2 Property, Chase executed a purported assignment of the Deed of Trust, in favor of HUD and the
 3 same was recorded on September 23, 2015 as Instrument No. 20150923:02959. Upon information
 4 and belief, U.S. Bank claims its interest under this purported assignment. (Exhibit 2).

5 4. On or about August 31, 2015, HUD executed a purported assignment of the Deed
 6 of Trust in favor of U.S. Bank and the same was recorded on September 23, 2015 at Instrument No.
 7 20150923:02960. (Exhibit 3).

8 5. On or about September 18, 2008, John D. MacArthur acquired real property located
 9 at 7555 Glowing Ember Court, Unit 101, Las Vegas, Nevada 89130, APN 125-27-219-013
 10 ("Property") subject to a Deed of Trust in favor of Metlife Home Loans, a division of Metlife Bank,
 11 N.A., duly recorded in the Official Records the Clark County Recorder, pursuant to Instrument No.
 12 20080918:05561 ("subject Deed of Trust"). (Exhibit 4).

13 6. On or about February 17, 2012 and April 5, 2012, Mortgage Electronic Registration
 14 Systems, Inc., Solely as Nominee for Metlife Home Loans, a division of Metlife Bank, N.A., its
 15 successors and assigns, located in Danville, Illinois, assigned and transferred all beneficial interest
 16 under the subject Deed of Trust to Metlife Home Loans, a division of Metlife Bank, N.A., located
 17 in Irving, Texas and duly recorded the assignments in the Official Records of the Clark County
 18 Recorder, pursuant to Instrument Nos. 20120217-0001861 and 20120405-0001100, respectively.
 19 (Exhibits 5 and 6).

20 7. During 2012, non-judicial foreclosure proceedings were initiated against John D.
 21 MacArthur, then the owner of record, and a non-judicial foreclosure sale, which complied with all
 22 requirements of Nevada law, was conducted on or about May 2, 2014. Due and proper notice of
 23 the foreclosure proceedings, including the foreclosure sale, was provided to John D. MacArthur
 24 and Chase, the sole entity holding a recorded interest under the Deed of Trust.

25 8. At all times subsequent to September 19, 2013 and prior to May 5, 2014, Chase was
 26 the sole party having a recorded, beneficial interest, under the subject Deed of Trust.

27 9. At all times between May 5, 2014 and September, 2015, no other parties recorded
 28 a beneficial interest, under the subject Deed of Trust.



1 10. On May 2, 2014, Suzannah R. Noonan and Anthony S. Noonan ("Noonans")
2 acquired the subject real property, by successfully bidding in good faith at the public foreclosure
3 auction, held in accordance with NRS 116.3116, et. seq. and tendering good and valuable
4 consideration.

5 11. The Noonans were the original bona fide purchasers of the subject real property.

6 12. On or about May 5, 2014, a Foreclosure Deed evidencing the consummation of the
7 foreclosure sale and the conveyance of the subject real property to the Noonans, as the original
8 bona fide purchasers, was duly recorded in the Official Records the Clark County Recorder,
9 pursuant to Instrument No. 20140505:0003148. (Exhibit 7).

10 13. On or about May 6, 2014, Anthony S. Noonan quitclaimed his interest, in the
11 subject real property to Suzannah R. Noonan, and a Quit Claim Deed evidencing the same was duly
12 recorded with the Office of the Clark County Recorder, pursuant to Instrument No.
13 20140506:00244. (Exhibit 8).

14 14. On or about June 18, 2014, Suzannah R. Noonan sold the subject real property to
15 My Home Now, a good faith purchaser, for good and valuable consideration.

16 15. My Home Now was a successor bona fide purchaser of the Property.

17 16. As of June 18, 2014, Chase was the sole party having a recorded, beneficial interest,
18 under the subject Deed of Trust.

19 17. As of June 18, 2014, Chase had not executed an assignment of its interest in the
20 Property, in favor of any other party.

21 18. As of June 18, 2014, HUD did not have or claim an interest in the Property, under
22 the subject Deed of Trust.

23 19. As of June 18, 2014, U.S. Bank did not have or claim an interest in the Property,
24 under the subject Deed of Trust.

25 20. As of June 18, 2014, Caliber did not have or claim an interest in the Property, under
26 the subject Deed of Trust.

27 21. A Quit Claim Deed evidencing the sale of the subject real property to My Home
28 Now, transferring ownership from the Noonans, the original bona fide purchasers, to the successor



1 bona fide purchaser, My Home Now, was duly recorded with the Office of the Clark County
 2 Recorder, pursuant to Instrument No. 20140619:01117. (Exhibit 9).

3 22. On October 6, 2014, My Home Now filed its Complaint for Quiet Title and
 4 Declaratory Relief, in the first iteration case, against J.P. Morgan Chase Bank, N.A. and unnamed
 5 Does and Roes, in the Clark County District Court, Case No. A-14-708130-C, *My Home Now, LLC*
 6 v. *JP Morgan Chase, N.A.* (“Glowing Ember #1”) The Complaint asserted three (3) claims for
 7 relief: 1) Declaratory Relief/Quiet Title (NRS 30.010, et seq., NRS 40.10 & NRS 116.3116), 2)
 8 Unjust Enrichment and 3) Preliminary and Permanent Injunction. (Exhibit 10).

9 23. As of the dates of 1) the sale of the Property to Plaintiff and 2) the commencement
 10 of the first quiet title lawsuit, Chase was the only recorded holder of an interest in the Property, as
 11 beneficiary under the subject Deed of Trust.

12 24. The particulars of the original Complaint included, but were not limited to the
 13 following summarized assertions, with regard to the recorded beneficial interest in the subject real
 14 property:

- 15 • Beneficiary interest holder(s) had actual or constructive **notice of the**
 foreclosure proceedings. (*Id.* ¶ 19).
- 16 • Beneficial interest holder (s) knew or should have known that its **interest**
 in the [subject real property] could be extinguished through foreclosure,
 if it failed to cure the Association lien, which gave rise to the foreclosure
 proceedings (*Id.* ¶ 22).
- 17 • Chase’s **security interest in the [subject real property], if any, was**
 extinguished by the foreclosure of the Association Lien. (*Id.* ¶ 31).
- 18 • A foreclosure sale conducted pursuant to NRS 116.31162-116.31168,
 extinguishes the title owner’s interest in the property and all junior liens
 and encumbrances, including **deeds of trust.** (*Id.* ¶ 37).
- 19 • The effect of the foreclosure of the assessment lien operates to **extinguish**
 the first deed of trust. (*Id.* ¶ 38).
- 20 • Chase was duly notified of the Association foreclosure sale and **failed to**
 act to protect their interests in the [subject real property], if any
 legitimately existed. (*Id.* ¶ 39).
- 21 • My Home Now was entitled to declaratory judgment finding: 1) My Home
 Now as the titled owner of the [subject real property]; 2) the Foreclosure
 Deed as valid and enforceable; 3) the Association **foreclosure sale**
 extinguished Defendants’, to include JPM, ownership and security
 interests in the [subject real property]; and 4) My Home Now’s rights
 and interest in the [subject real property] are superior to any adverse

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interest claimed by Defendants, to include JPM. (*Id.* ¶ 40).

25. On or about December 9, 2014, Chase filed an Answer to the quiet title Complaint.

3 26. In early February of 2015, Chase informed counsel for Plaintiff that Chase had no
4 interest in the Property and purported that the title had been reassigned to another entity along with
5 the beneficial interest therein. This conversation was memorialized by correspondence from
6 Plaintiff's counsel to Chase's counsel. (Exhibit 11).

7 27. On or about February 9, 2015, Chase filed a Disclaimer of Interest (“Disclaimer”),
8 disclaiming any and all legal or equitable interest in the Property, **without reservation**, which stated
9 as follows:

"Defendant JP MORGAN CHASE, N.A. ("Chase") hereby disclaims any legal or equitable interest in the subject real property located at 7555 Glowing Ember Court, Unit 101, Las Vegas, NV, 89130; Parcel No. 125-27-219-013 and consents to being dismissed from this matter." (Exhibit 12).

13 28. As of February 9, 2015, Chase was the only recorded holder of an interest in the
14 Property, as beneficiary under the subject Deed of Trust. Chase filed the Disclaimer, with the Court,
15 without regard to the truth or falsity, purporting to have no legal or equitable interest in the
16 Property.

17 29. As of February 9, 2015, no legally recognized contractual document existed by and
18 between Chase and HUD, respecting a transfer of interest in the Property prior to July 31, 2015.

19 30. Plaintiff relied upon the representations of Chase, by and through its counsel, that
20 Chase did not claim a beneficial interest in the Property, under the subject Deed of Trust and agreed
21 to stipulate to dismiss its' claims, with prejudice, with each party to bear its' attorneys' fees and
22 costs.

23 31. But for the representations of Chase's counsel and the Disclaimer of Interest, on
24 which Plaintiff relied to its detriment, Plaintiff would have continued to prosecute the quiet title
25 action against Chase.

26 32. During the pendency of the litigation, no other party claimed an interest adverse to
27 Plaintiff's interest in the Property.

28 33. On June 2, 2015, My Home Now and Chase entered into a Stipulation and Order



1 Chase supported by consideration. The terms of the Stipulation stated as follows:

2 “1. Defendant JP MORGAN CHASE BANK, N.A. disclaimed any interest
3 in the property located at 7555 Glowing Ember Court, Unit 101, Las Vegas,
4 NV 89130; Parcel No. 125-27-219-013 through a Disclaimer of Interest filed
herein...on February 9, 2015.

5 2. Based upon the filed Disclaimer of Interest and the representations of
6 counsel, Plaintiff MY HOME NOW **agrees to dismiss any and all claims**
7 as set forth in its First Amended Complaint filed on May 11, 2015...in the
above-referenced case **with prejudice** to Defendant JP MORGAN CHASE
BANK, N.A. only. The claims remain as to all other parties. (Emphasis
added.)

8 3. The parties will bear their own attorneys' fees and costs.” (Exhibit 13).

9 34. Pursuant to the terms of the Stipulation, the Court entered an Order, which states as
10 follows:

11 “IT IS ORDERED that Plaintiff's first Amended Complaint for Quiet Title
12 and Declaratory Relief be and hereby is **Dismissed with Prejudice against**
13 **Defendant JP MORGAN CHASE BANK, N.A.**, as to any and all claims
14 **based upon facts alleged therein** as to Defendant JP MORGAN CHASE
BANK, N.A., with each party to bear its own costs and attorney's fees.” (*Id.*)

15 35. As of June 2, 2015, when the Stipulation of Dismissal was entered, Chase was the
16 only recorded holder of an interest in the Property, as beneficiary under the subject Deed of Trust,
17 and Chase had not executed an assignment of any interest in the Property, in favor of any other
party.

18 36. The Disclaimer of Interest filed by Chase, denying any interest in the Property, which
19 gave rise to Plaintiff's agreement to enter into the Stipulation and Dismissal was filed in reckless
20 disregard to the truth or falsity of any interest which would have allowed Chase to execute the July
21 31, 2015 assignment of interest in favor of HUD.

22 37. On or about July 31, 2015, despite having disclaimed “all legal and equitable
23 interest” in the subject real property, Chase executed a purported assignment of the subject Deed
24 of Trust, in favor of the Secretary of Housing and Urban Development (“HUD”) and the same was
25 recorded on September 23, 2015.

26 38. Neither Chase nor HUD disclosed their purported assignment to Plaintiff and the
27 purported assignment was not known to Plaintiff until it was discovered by Plaintiff, through its
28 own diligence, after September 23, 2015.

1 39. Neither Chase, HUD, nor U.S.. Bank disclosed the purported assignment, between
 2 HUD and U.S.. Bank, to Plaintiff and the purported assignment was not known to Plaintiff until
 3 it was discovered by Plaintiff, through its own diligence, after September 23, 2015.

4 40. Between July 31, 2015 and September 23, 2015, the date the purported assignments
 5 were recorded, Chase neither communicated, nor made any effort to make Plaintiff or its counsel
 6 aware of the impending recordings against Plaintiff's title.

7 41. As of July 31, 2015, Chase knew that 1) Chase had disclaimed all interest in the
 8 Property, as of February 2, 2015, without reservation; 2) Plaintiff had relied to its detriment on
 9 Chase's full disclaimer; 3) Plaintiff and Chase had entered into a reciprocal agreement to dismiss
 10 all claims, related to Chase's interest; and 4) The dismissal of Chase with prejudice was intended
 11 to preclude the parties from asserting future claims, respecting the Property, against each other.

12 42. After disclaiming any and all interest in the Property, under the subject Deed of
 13 Trust, Chase failed to identify or disclose the identity of the party to whom it might have
 14 purportedly transferred an interest and did not provide a scintilla of identifying information.

15 43. The post-disclaimer and post-dismissal with prejudice acts by Chase, to assign an
 16 interest in the Property to HUD, were done knowingly and/or with a reckless disregard to truth or
 17 falsity of the prior Disclaimer of Interest and had the effect of disparaging Plaintiff's title to the
 18 Property.

19 44. During the pendency of the litigation, Plaintiff amended its' Complaint to include
 20 John D. MacArthur, the prior owner, in the first quiet title lawsuit. On or about October 14, 2015,
 21 John D. MacArthur was defaulted.

22 45. On or about March 15, 2015, My Home Now filed its First Amended Complaint for
 23 Quiet Title and Declaratory Relief, which added John D. MacArthur ("MacArthur"), as a party
 24 Defendant, who was defaulted on or about October 14, 2015.

25 46. On or about November 25, 2015, a Default Judgment was entered in favor of My
 26 Home Now, against MacArthur, on Plaintiff's Motion for Default, and the Court rendered Judgment
 27 and Decreed as follows, in Glowing Ember #1:

28 • Acknowledged Chase's Disclaimer of Interest filed on February 9, 2015 and
 the Stipulation and Order of Dismissal filed on June 7, 2015;



- 1 • Entered judgment in favor of My Home Now, against MacArthur and any
2 ROE entity, quieting title to the subject real property “free and clear of the
3 Deed of Trust recorded on September 18, 2008 or any other interest of said
4 Defendant.”
5
6 • Entered judgment in favor of My Home Now, as a result of the
7 Foreclosure Sale occurring on May 2, 2014 and the recordation of a
8 Foreclosure Deed pursuant to 116.31164 on May 5, 2014 , finding “the
9 interests of MacArthur and any ROE entity were extinguished as a matter of
10 law.”
11
12 • Decreed that “title to the subject real property vested in My Home Now, free
13 and clear of MacArthur and any and all ROE entities, including but not
14 limited to any claims relating to, arising from or otherwise set forth in the
15 deed of trust recorded on September 18, 2008 as instrument number
16 20080918:05561.” (Exhibit 14).

17 47. The Default Judgment was a final judgment, which not challenged or appealed by
18 Chase or any other party, including U.S. Bank or Caliber, which was duly recorded on November
19 30, 2015, with the Clark County Recorder, at Instrument No. 201511300001274. (*Id.*)

20 48. The Judgment and Decree entered by the Honorable Andrew P. Gordon, in Glowing
21 Ember #1 constituted the law of the case, with regard to the subject real property and the subject
22 Deed of Trust.

23 49. The law of the case established legal and equitable ownership of the subject real
24 property in favor of My Home Now, as of November 25, 2015, vesting free and clear title in My
25 Home Now, which was binding upon Chase, as of November 25, 2015 and remains binding upon
26 Chase, Chase’s purported assignee, HUD, and HUD’S purported assignee U.S. Bank.

27 50. Chase did not purport to assign an interest to HUD until after Chase’s execution of
28 both the Disclaimer and the Stipulation and the purported assignment did not have any legal effect.

29 51. On or about March 11, 2016, approximately four (4) months after the final judgment
30 was entered quieting title in favor of Plaintiff, Caliber sent an email to counsel for Plaintiff
31 purporting to seek a payoff of delinquent HOA/lien fees and claiming to hold an interest in the
32 Property. Caliber held itself out to be the “servicer”. (Exhibit 15).

33 52. Caliber has claimed its interest under the set of purported assignments, recorded on
34 September 25, 2015, from Chase to HUD and HUD to U.S. Bank.

35 53. Neither U.S. Bank nor Caliber entered or sought to intervene in the first quiet title
36 action, either prior subsequent to the final entry of judgment.



1 54. To date, neither U.S. Bank, Caliber nor Chase have filed any pleadings, challenging
 2 the final entry of judgment, in the first quiet title action.

3 55. Neither HUD, U.S. Bank nor Caliber had a recorded interest in the subject real
 4 property as of May 2, 2014, the date the Noonans, the original bona fide purchasers, purchased the
 5 subject real property at the public foreclosure auction and recorded their interest, as required by
 6 Nevada law.

7 56. Neither HUD, U.S. Bank nor Caliber had a recorded interest in the subject real
 8 property as of June 18, 2014, the date My Home Now the successor bona fide purchaser, purchased
 9 the subject real property and recorded its interest, as required by Nevada law.

10 57. Neither HUD, U.S. Bank nor Caliber had a recorded interest in the subject real
 11 property as of October 6, 2014, when My Home Now filed its Complaint for Quiet Title and
 12 Declaratory Relief, in the first iteration case, against Chase, in Glowing Ember #1.

13 58. NRS 111.325 provides as follows:

14 **“Unrecorded conveyances void as against subsequent bona fide purchaser for value
 15 when conveyance recorded.** Every conveyance of real property within this State hereafter
 16 made, which shall not be recorded as provided in this chapter, shall be void as against any
 17 subsequent purchaser, in good faith and for a valuable consideration, of the same real
 18 property, or any portion thereof, where his or her own conveyance shall be first duly
 19 recorded.”

20 59. My Home Now and the Court relied upon Chase’s Disclaimer of Interest and the
 21 Stipulation and Order Dismissing Chase, in the adjudication of Glowing Ember #1 and Chase is
 22 estopped from purporting to assign “all beneficial interest” under the subject Deed of Trust to HUD,
 23 after “disclaiming all legal and equitable interest”, as a matter of record, in Glowing Ember #1.

24 60. On or about June 24, 2016, U.S. Bank filed a Notice of Lis Pendens (ECF #.25),
 25 asserting its purported interest in the subject real property, under the purported assignments by
 26 Chase to HUD and HUD to U.S. Bank.

27 61. Neither HUD nor U.S. Bank had a recorded interest in the subject real property prior
 28 to the recorded acquisition by the original bona fide purchasers, the recorded acquisition by My



1 Home Now, or the filing of Glowing Ember #1.

2 62. As of November 25, 2015, title to the Property vested in My Home Now free and
 3 clear of any interest of MacArthur and Chase, inclusive of any claim which might be made under
 4 Chase's interest, and preclusive of any claim by HUD or under HUD alleged interest.
 5

6 63. As of November 25, 2015, the interests of any and all ROE entities were
 7 extinguished, in favor of My Home Now's free and clear title, specifically claims arising under the
 8 subject Deed of Trust, inclusive of any claims under HUD's alleged interest or by U.S. Bank and
 9 Caliber.
 10

11 64. Plaintiff attempted to obtain title insurance for the Property and same was rejected
 12 in or around February, 2016 based upon the existence of a cloud on title caused by the assignments
 13 of interest recorded on September 23, 2015. (Exhibit 16).

14 65. Defendants U.S. Bank and Caliber claim an interest in the Property, under the Deed
 15 of Trust, which is predicated on the purported assignment by Chase to HUD and the same, along
 16 with the existing Lis Pendens, has slandered Plaintiff's title and rendered it unmarketable.
 17

18 IV. STANDARD OF REVIEW

19 A. Summary Judgment

20 A court must grant summary judgment when "the movant shows that there is no genuine
 21 dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R.
 22 Civ. P. 56 (a). Material facts are those which may affect the outcome of the case. *Anderson v.*
 23 *Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. St. 2505, 91 L.Ed. 2d 202 (1986). A principal
 24 purpose of summary judgment is "to isolate and dispose of factually unsupported claims." *Celotex*
 25 *Corp. v. Catrett*, 477 U.S. 317, 323-324, 106 S.Ct. 2548, 91 L. Ed. 2d 265 (1986). In determining
 26 summary judgment, a court uses a burden-shifting scheme:
 27
 28



1 “When the party moving for summary judgment would bear the burden of proof at trial, it
 2 must come forward with evidence which would entitle it to a directed verdict if the evidence
 3 went uncontested at trial. In such a case, the moving party has the initial burden of
 4 establishing the absence of a genuine issue of fact on each issue material to its case. *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000).”

5 Conversely, when the moving party bears the burden of proving the claim or defense, the
 6 moving party can meet its burden in two ways: 1) by presenting evidence to negate an essential
 7 element of the nonmoving party’s case; or 2) demonstrating that the nonmoving party failed to make
 8 a showing sufficient to establish an essential element of that party’s case on which that party will
 9 bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323-24. If the moving party fails
 10 to meet its initial burden, summary judgment must be denied and the court need not consider the
 11 nonmoving party’s evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159-60, 90 S. Ct.
 12 1598, 26 L. Ed. 2d 142 (1970).

14 If the moving party meets its initial burden, the burden then shifts to the opposing party to
 15 establish a genuine issue of material fact. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*,
 16 475 U.S. 574, 586, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). To establish the existence of a factual
 17 dispute, the opposing party need not establish a material issue of fact conclusively in its favor. It
 18 is sufficient that “the claimed factual dispute be shown to require a jury or judge to resolve the
 19 parties’ differing versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 631 (9th Cir. 1987). The nonmoving party cannot avoid summary judgment
 20 by relying solely on conclusory allegations unsupported by facts. *See Taylor v. List*, 880 F.2d 1040,
 21 1045 (9th Cir. 1989). Instead, the opposition must go beyond the assertions and allegations of the
 22 pleadings and set forth specific facts by producing competent evidence that shows a genuine issue
 23 for trial. *See Fed. R. Civ. P. 56 (e); Celotex Corp.*, 477 U.S. at 324.

27 At the summary judgment stage, a court’s function is not to weigh the evidence and
 28 determine truth, but to determine whether there is a genuine issue for trial. *See Anderson*, 477 U.S.



1 at 249. The non-movant's evidence is "to be believed, and all justifiable inferences are to the drawn
 2 in his favor." *Id.* At 255. But, if the evidence of the nonmoving party is merely colorable or it is not
 3 significantly probative, summary judgment is warranted.
 4

5 V. ARGUMENT

6 A. The Disclaimer of Interest, Stipulation and Order Dismissing Chase and 7 Default Judgment, in the Glowing Ember #1 Litigation, are Binding as 8 a Matter of Law and Equity; and Summary Judgment is Warranted on the First Claim for Relief, as to Defendants U.S. Bank and Caliber.

9 In the prior litigation, Chase appeared, filed an Answer to an initial complaint and was
 10 served with an amended complaint. Within days of being served with the amended complaint,
 11 Chase filed a formal Disclaimer of Interest. (Ex. 10). The Disclaimer of Interest stated plainly that
 12 Chase disclaimed "any legal or equitable interest in the subject real property". (*Id.*)
 13

14 In June of 2015, four (4) months later, Chase executed a formal Stipulation, the purpose of
 15 which was to benefit Chase, in the form of a dismissal from the litigation. The Stipulation
 16 reiterated Chase's disclaimer and included a recitation of My Home Now's reliance on the
 17 disclaimer in agreeing to dismiss Chase. My Home Now relied on the disclaimer, to its detriment,
 18 and agreed to dismiss "any and all claims as set forth in its First Amended Complaint filed on May
 19 11, 2015 **with prejudice** against Chase".
 20

21 On or about June 2, 2015, the Court entered an Order on the Stipulation dismissing the First
 22 Amended Complaint with prejudice "as to any and all claims based upon facts alleged" as to Chase.
 23 (*Id.*). The dismissal relieved Chase, as a party, from defending litigation which sought to
 24 determine the rightful owner of title to the subject real property. In its prayer for relief, My Home
 25 Now had sought a declaration that Chase "be declared to have no right, title or interest in the
 26 [subject real property]." The Disclaimer of Interest and the Stipulation constituted Chase's binding,
 27 formal acknowledgment that Chase did not have any right, title or interest in the real property
 28

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1 located at 7555 Glowing Ember Court, Unit 101, Las Vegas, NV 89130, Parcel No. 125-27-219-
 2 013 from removal of the first iteration to federal court through the present.
 3

4 1. The Post-Disclaimer “Successors” are Judicially Estopped from
Claiming an Interest in the Subject Real Property or Under the Subject
Deed of Trust, Warranting Summary Judgment in the Form of
Declaratory Relief and Quiet Title.

5 Both U.S. Bank and Caliber claim their interest in the Property under Chase and the
 6 purported assignment by Chase to HUD, which was made after Chase disclaimed its interest and
 7 entered into the Stipulation and Dismissal. Chase no longer claims an interest in the Property.
 8 However, if it did, it would be judicially estopped from asserting any right, title or interest, therein,
 9 after the dismissal with prejudice of in Glowing Ember #1, which was predicated on its disclaimer
 10 of interest.
 11

12 Chase’s “successors” must stand in its shoes. Consequently, U.S. Bank and Caliber are
 13 judicially estopped from claiming an interest under or through Chase, which is contrary to Chase’s
 14 disclaimer of interest and could not be claimed by Chase. The doctrine of judicial estoppel is
 15 sometimes referred to as the doctrine of preclusion of inconsistent positions and is invoked to
 16 prevent a party from changing its position over the course of judicial proceedings when such
 17 positional changes have an adverse impact on the judicial process.
 18

19 The doctrine of judicial estoppel focuses exclusively on preventing the use of inconsistent
 20 assertions to protect the judiciary’s integrity and to prevent a party from taking inconsistent
 21 positions in an attempt to obtain an unfair advantage or “playing fast and loose with the courts.”
 22

23 *Rockwell Intern. v. Hanford Atomic Metal Trades*, 851 F. 2d 1208 (9th Cir. 1988), *So. California*
 24 *Edison v. First Jud. Dist. Ct.*, 255 P.3d 231 (Nev. 2011).

25 The U.S. Supreme Court recognizes that “[t]he circumstances under which judicial estoppel
 26 may appropriately be invoked are probably not reducible to any general formulation of principle.”
 27

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1 New Hampshire v. Maine, 532 U.S. 742, 750 (2001) (quoting *Russell v. Rolfs*, 893 F.2d 1033, 1037
 2 (9th Cir. 1990)). Federal courts in jurisdiction have considered three factors in determining the
 3 applicability of the doctrine of judicial estoppel: (1) whether the party's position is "clearly
 4 inconsistent" with an earlier position; (2) whether the party has succeeded in persuading a court to
 5 accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later
 6 proceeding would create the perception that either the first or the second court was misled; and (3)
 7 whether the party advancing an inconsistent position "would derive an unfair advantage or impose
 8 an unfair detriment on the opposing party if not estopped. (*Id.*).
 9

10 The instant matter clearly invokes application of the judicial estoppel doctrine, as all of the
 11 factors were met. The first position is that Chase transferred its interest prior to the first iteration.
 12 As set forth in the Disclaimer of Interest, "disclaimed any legal or equitable interest in the subject
 13 real property" in February of 2015. (*See* Ex. 12). Chase's position was made during the course of
 14 litigation, which litigation was dismissed by My Home Now with prejudice, in reliance upon the
 15 disclaimer. Chase was successful in asserting its' first position and notwithstanding its more recent
 16 position, Chase's successors may not advantage themselves with a contrary position.
 17

18 Approximately two (2) months after the dismissal of the case as to Chase, which was
 19 predicated on Chase's disclaimer of all interest in the subject real property, a document entitled
 20 "Nevada Assignment of Deed of Trust" was executed in Monroe, Louisiana, wherein, Chase
 21 purported to "grant, sell, assign, transfer and convey...***all beneficial interest*** under [the subject Deed
 22 of Trust]". (Emphasis added.) This document is notarized and dated after Chase's disclaimer.
 23

24 The following month, HUD executed an untitled document in favor of U.S. Bank purporting
 25 "to assign and transfer...all its right, titled and interest in and to the [subject Deed of Trust]." (Ex.
 26 17). Chase's use of the terminology "beneficial interest", with regard to the purported assignment
 27 to HUD is mere semantics as Chase had disclaimed **all** legal and equitable interest in favor of My
 28



1 Home Now. A beneficial interest, which is equitable in nature, is defined as “[a] right in something,
 2 as opposed to legal title to that thing”. Black's Law Dictionary (9 ed. 2009).

3 The second position is that Chase claims it assigned its' interest in the subject property after
 4 dismissal from the first iteration. Although Chase denies it retained an interest in the subject
 5 property through its Disclaimer, it purported transferred an interest to HUD after Chase was
 6 dismissed from the first iteration. U.S. Bank holds itself out as the owner of the subject real
 7 property, which ownership claim is predicated on Chase's post-disclaimer assignment.

8 The two (2) positions are patently inconsistent. The first position was not taken as a result
 9 of ignorance, fraud or mistake. To the contrary, Chase was represented by the same counsel, with
 10 regard to both positions. It is clear from Chase's pleadings on file that a knowing, informed
 11 decision, presumably upon the advice of counsel, was made to take the position of disclaiming all
 12 legal and equitable interest.

13 Once taken, Chase was bound by and to the first position. Under the doctrine of judicial
 14 estoppel a party may be estopped merely by the fact of having alleged or admitted in pleadings in
 15 a former proceeding the contrary of the assertion sought to be made. *Sterling Builders, Inc. v.*
Fuhrman, 80 Nev. 543, 549, 396 P.2d 850, 854 (1964), (a plaintiff who filed a claim and received
 16 benefits, asserting an accidental injury was barred from filing a latter claim asserting intentional
 17 injury); *Hay v. First Interstate Bank of Kalispell, N.A.*, 978 F.2d 555, 557 (9th Cir. 1992) (finding
 18 that a plaintiff was judicially estopped from asserting an interest or claim, where the plaintiff failed
 19 to disclose the existence of the interest in a prior bankruptcy proceeding and summary judgment
 20 was entered against the plaintiff who tried to assert an inconsistent position).

21 Between the June 2015 entry of the Stipulation and Order and the November 2015 final
 22 judgment, none of the Defendants involved themselves in the Glowing Ember #1 litigation. The
 23 November 2015 judgment, which referenced the disclaimer of interest, was a *judgment* as defined



1 by Rule 54 of the Federal Rules of Civil Procedure as "any order from which an appeal lies," which
 2 has not been timely appealed. Fed. R. Civ. P. 54.

3 Plaintiff's Second Amended Complaint does not seek to quiet title against Chase, as the
 4 Court dismissed the quiet title claim with prejudice under the First Amended Complaint. However,
 5 it remains that, notwithstanding the same, Chase did not have a *beneficial interest*, which survived
 6 Disclaimer of Interest and Stipulation of Dismiss, in the prior litigation. Additionally, the final
 7 judgment entered in the prior litigation further resolved the matter of "any claims relating to, arising
 8 from...the deed of trust recorded on September 18, 2008 as instrument number 200809240005561"
 9 and vested title free and clear of all interests of "and any ROE ENTITY". (See Ex. 14).

10 As noted, the final judgment in the first iteration was not appealed and neither HUD, U.S.
 11 Bank nor Caliber sought to intervene in the initial litigation, at any time, prior or subsequent to the
 12 November 2015 entry of final judgment. While none of the successors, purporting to have acquired
 13 a post-disclaimer interest(s), enjoyed cognizable claims, their forum to assert any claimed interest
 14 would have been in the Glowing Ember #1 case, where the law of the case was established.
 15 Pursuant to the law of the case doctrine, the Disclaimer, Stipulation, Order and Default Judgment
 16 must be given full force and effect, warranting entry of summary judgment on the Quiet Title claim,
 17 against U.S. Bank and Caliber, in favor of My Home Now.

18 2. **The Post-Disclaimer "Successors" are Equitably Estopped**
 19 **from Claiming an Interest in the Subject Real Property or Under**
 20 **the Subject Deed of Trust, Warranting Declaratory Relief and Quiet**
 21 **Title.**

22 Chase's "successors" are equitably estopped from claiming an interest through Chase,
 23 which is contrary to Chase's disclaimer of interest. Equitable estoppel is close in concept to the
 24 doctrine of judicial estoppel. The doctrine of equitable estoppel, focuses principally on the
 25 relationship among the parties. As such, a party is equitably estopped from asserting an inconsistent



1 position whenever the adverse party has detrimentally relied on it. *In re Harrison Living Trust*, 112
 2 P.3d 1058, 1061-62 (Nev. 2005) (equitable estoppel functions to prevent the assertion of legal rights
 3 that in equity and good conscience should not be available due to a party's conduct).
 4

5 Chase was advantaged, in the form of the dismissal with prejudice in its favor as to "any
 6 and all claims based upon the First Amended Complaint" in the Glowing Ember #1 quiet title
 7 action, predicated on the disclaimer of any legal or equitable interest. After the dismissal, Chase
 8 purported to assign a "beneficial interest", where no interest existed. Now, U.S. Bank and Caliber
 9 seek to assert an interest under a purported assignment by Chase and HUD, where neither Chase
 10 nor HUD had an interest to assign.
 11

12 U.S. Bank and Caliber would have the Court allow Chase to disclaim its interest in a quiet
 13 title action, obtain a stipulated dismissal with prejudice in its favor against My Home Now and then
 14 purport to convey the disclaimed interest to a third party by a latter executed assignment. The
 15 scenario, proposed by Chase, invites a level of cognitive dissonance that belies principles of equity
 16 and is inconsistent with the rule of law.
 17

18 A finding of equitable estoppel must rest on consideration of several factors. Of critical
 19 importance is a showing of the plaintiff's actual and reasonable reliance on the defendant's conduct
 20 or representations. In the instant case, My Home Now relied to its detriment on the disclaimer and
 21 the dismissal. Contrary to U.S. Bank and Calibers' assertions, the post-dismissal recordation did
 22 not alter My Home Now's vested interest in the subject real property. The subsequent assignment
 23 could not fashion a whole-cloth interest Chase, where none existed. Equitable estoppel consists of
 24 four elements:
 25

26 (1) the party to be estopped must be apprised of the true facts; (2) the acting party must
 27 intend that the conduct shall be acted upon, or must so act that the party asserting estoppel
 28 has the right to believe it was so intended; (3) the party asserting the estoppel must be
 ignorant of the true state of facts; (4) the aggrieved party must have relied to its detriment
 on the conduct of the party to be estopped.



1 In the instant litigation, U.S. Bank and Caliber, the acting parties, purport that Chase had
 2 a “beneficial interest” in the Property when Chase executed the purported assignment in July 2015.
 3 The fact remains that no legal writing existed between Chase and HUD or any other entity from
 4 February 9, 2015, when Chase executed the disclaimer, through Chase’s July 31, 2015 execution
 5 of an assignment that gave Chase an interest in the subject property. Therefore the assignment from
 6 Chase was without legal effect to alter the prior disclaimer, which was made without reservation.
 7

8 **B. Claim and Issue Preclusion Chase’s “successors” from Claiming an Interest in**
the Subject Real Property or Under the Subject Deed of Trust, Warranting
Declaratory Relief and Quiet Title in Favor of My Home Now.

9 The doctrine of res judicata bars future claims arising from facts that have already been the
 10 subject of litigation. The purpose of the doctrine, which presupposes identity between causes of
 11 action, is to ensure that all possible claims will be brought and adjudicated in the same action.
 12 *Holcombe v. Hosmer*, 477 F.3d 1094, 1098 (9th Cir. 2007) (for the purposes of defining a claim
 13 under Nevada law, when the same evidence supports both the present and the former cause of
 14 action, the two causes of action are identical).
 15

16 Nevada departed from using *res judicata*, in its traditional sense, in favor of recognizing the
 17 doctrines of issue preclusion and claim preclusion. *Five Star Capital Corp. v. Ruby*, 194 P.3d 709
 18 (Nev. 2008) (recounting Nevada’s history of the doctrines of claim preclusion and issue preclusion).

19 **1. Summary Judgment is warranted on the basis of claim preclusion.**

20 Claim preclusion under the doctrine of res judicata applies when “a final judgment on the
 21 merits bars further claims by the same parties or their privies based on the same cause of
 22 action.” *Montana v. United States*, 440 US 147 (S. Ct. 1979). In *Montana*, the U. S. Supreme Court
 23 noted that a fundamental precept of common-law adjudication, embodied in the related doctrines
 24 of collateral estoppel and res judicata, is that a “right, question or fact distinctly put in issue and
 25 directly determined by a court of competent jurisdiction . . . cannot be disputed in a subsequent suit



1 between the same parties or their privies. Id., citing, *Southern Pacific R. Co. v. United States*, 168
 2 U. S. 1, 48-49 (1897) (intent of claim preclusion is to preclude parties from contesting matters that
 3 they have had a full and fair opportunity to litigate protects their adversaries from the expense and
 4 vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial
 5 action by minimizing the possibility of inconsistent decisions).

7 In *Five-Star*, the Nevada Supreme Court set forth a three-part test for determining whether
 8 claim preclusion should apply. This test maintains the well-established principle that claim
 9 preclusion applies to all grounds of recovery that were or could have been brought in the first case.
 10 This federal district recognizes *Five-Star* and the three (3) factors are embraced by state and federal
 11 court alike:

13 (1) the parties or their privies are the same, (2) the final judgment is valid, and (3) the
 14 subsequent action is based on the same claims or any part of them that were or could have
 15 been brought in the first case.

16 **2. Summary judgment is warranted on the basis of issue preclusion.**

17 The doctrine of collateral estoppel is applicable when non-parties assume control over
 18 litigation in which they claim an interest and then seek to redetermine issues previously resolved.
 19 While the doctrine is recognized by the federal courts, under Nevada law collateral estoppel is
 20 referred to as “issue preclusion”. In determining whether a claim is barred by issue preclusion, the
 21 federal court must look to state law.

22 In the instant case, Chase’s “successors” seek not to be bound by the prior litigation. The
 23 Defendants seek to enjoy the benefits of the litigation, while attempting to avoid the respective
 24 responsibilities. However, while the U. S. Bank and Caliber were not parties to the Glowing Ember
 25 #1 litigation, they are not “strangers” to that action, by law. *See Montana*, citing, *Schnell v. Peter*
 26 *Eckrich & Sons, Inc.*, 365 US 260 (S. Ct. 1961) ([O]ne who prosecutes or defends a suit in the name
 27 of another to establish and protect his own right, or who assists in the prosecution or defense of an
 28



action in aid of some interest of his own . . . is as much bound . . . as he would be if he had been a party to the record).

The re-litigation of any claims that were raised or could have been raised in a prior action is prohibited and the prohibition applies to all grounds of recovery that were or could have been brought in the first case. Under Nevada law, for claim or issue preclusion to apply: (1) the issue decided in the prior adjudication must be identical to the issue presented in the action in question; (2) there must be a final judgment on the merits; (3) the party against whom the judgment is asserted must have been a party, or in privity with a party, to the prior adjudication; and (4) the issue was actually and necessarily litigated.

The later prong distinguishes the two (2) doctrines. Issue preclusion applies only where an issue in a prior case was “actually and necessarily litigated,” meaning that it was “necessary to the judgment in the earlier suit.” Clearly, Chase’s disclaimer of interest was withing the meaning of actually and necessarily litigated, with regard both the February 2, 2015, dismissal with prejudice and the November 25, 2015, default judgment.

For the foregoing reasons, summary judgment is warranted in favor of Plaintiff, My Home
Now, and against U.S. Bank and Caliber, as to the First Claim for Relief, set forth in the Second
Amended Complaint for Quiet Title and Declaratory Relief.

C. Defendants, each of them, clouded My Home Now's Title to the Subject Real Property and My Home Now is Entitled to Summary Judgment.

Slander of title involves false and malicious communications that disparage a party's title in land and cause special damages. In the instant case, as of November 25, 2015, all title to the subject real property vested in My Home Now, pursuant to the judgment, order and decree of the Court. The Court Order, which was a matter of public record, expressly stated that My Home Now's vested title was "free and clear of any claims relating to, arising from, or otherwise set forth in the

1 [subject deed of trust]." Chase had actual knowledge of the proceedings and its purported
 2 assignee(s) and successor(s) were charged with the same knowledge.

3 Notwithstanding the same, without lawful authority or right, Defendants engaged in
 4 intentional conduct, which had the effect of clouding My Home Now's title, including but not
 5 limited to the recording of assignments, by Chase and HUD, and a Lis Pendens, recorded by U.S.
 6 Bank. Consequently, My Home Now has been unable to transfer the property or obtain title
 7 insurance.

8 Chase had disclaimed "any legal or equitable interest" in the subject real property as of
 9 February, 2005, and the knowing, wilful and malicious actions of the Defendants, each of them,
 10 were done with the deliberate intent to harm and injure My Home Now and to advantage
 11 Defendants, each of them. By interfering with and attempting to deprive My Home Now of its
 12 existing property ownership, Defendants, each of them, slandered My Home Now's title to the
 13 subject real property.

14 For the foregoing reasons, summary judgment is warranted in favor of Plaintiff, My Home
 15 Now, and against Defendants, Chase, U.S. Bank and Caliber, as to the Second Claim for Relief, set
 16 forth in the First Amended Complaint for Quiet Title and Declaratory Relief.

17 D. **Chase Breached its Contract With My Home Now and My Home Now is**
 18 **Entitled to Summary Judgment Against Chase.**

19 In the instant case, Chase entered into an agreement with My Home Now, whereby My
 20 Home Now fully performed, by dismissing its claims against Chase, with prejudice, in exchange
 21 for Chase's disclaimer of any interest equitable or legal interest, upon which My Home Now relied
 22 to its detriment. Subsequent to the entry of dismissal, in Chase's favor, Chase breached the
 23 agreement, by executing and recording a purported assignment of an alleged "beneficial interest"
 24 in the subject real property to a third-party, HUD. HUD executed and recorded a purported
 25
 26
 27
 28



1 assignment of the alleged interest to U.S. Bank. Subsequently, U.S. Bank filed a Notice of Lis
 2 Pendens which, along with the purported assignments of interest, has slandered and clouded My
 3 Home Now's vested title. The post-disclaimer claims of interest by Chase and the successor
 4 assignees are directly contrary to the Disclaimer of Interest and the Stipulation executed by Chase
 5 and relied upon by My Home Now.

7 For the foregoing reasons, summary judgment is warranted in favor of Plaintiff, My Home
 8 Now, and against Defendants, Chase, U.S. Bank and Caliber, as to the Third Claim for Relief, set
 9 forth in the First Amended Complaint for Quiet Title and Declaratory Relief.
 10

11 E. **Defendants Caliber and U.S. Bank lack standing in the instant lawsuit as**
Neither HUD nor U.S. Bank Have a Legal or Equitable Interest in the Subject
Real Property.

13 In the instant case, Defendant, Chase's interest was recorded in an assignment from Metlife
 14 Bank, N.A., on or about September 19, 2013. Metlife, as Assignor, conveyed to Chase, as Assignee
 15 its "*beneficial interest under the Deed of Trust.*" On or about June 2, 2015, in Glowing Ember #1,
 16 My Home Now and Chase entered into a Stipulation and Order, supported by equitable
 17 consideration. Pursuant thereto, Chase disclaimed "any legal or equitable interest in the subject real
 18 property" and under the subject Deed of Trust. On or about November 25, 2015, the Court entered
 19 a final Order closing the case, which incorporated Chase's disclaimer of interest. The Court's final
 20 Order quieted title in favor of My Home Now.
 21

23 Defendants U.S. Bank and Caliber attempt to advance claim(s) in Glowing Ember #2 ,
 24 under purported assignments of interest from Chase to HUD, and from HUD to U.S. Bank, recorded
 25 on or about September 23, 2015. The September 2015 assignments purport to "transfer all
 26 beneficial interest under [the subject] Deed of Trust" from Chase to HUD and HUD to U.S. Bank.
 27 (See Ex. 1, Ex. 2). However, as of June 2015, Chase had entered into a legally binding stipulation
 28 disclaiming its interest.



1 Neither U.S. Bank nor Caliber had a recorded interest in the subject real property as of May
 2 2, 2014, the date the Noonans, the original bona fide purchasers, purchased the subject real property
 3 at the public foreclosure auction and recorded their interest, as required by Nevada law. *SFR*
 4 *Investments Pool 1, v. U.S. Bank*, 334 P.3d 408, 418 (Nev. 2014)(en banc). Neither U.S. Bank nor
 5 Caliber had a recorded interest in the subject real property as of June 18, 2014, the date Plaintiff,
 6 My Home Now, LLC, the successor bona fide purchaser, purchased the subject real property nor
 7 Caliber and recorded its interest, as required by Nevada law. NRS 111.325 provides that
 8 unrecorded conveyances are void as against subsequent bona fide purchasers when conveyances are
 9 recorded, stating as follows:

10 “Every conveyance of real property within this State hereafter made, which shall not be
 11 recorded as provided in this chapter, shall be void as against any subsequent purchaser, in
 12 good faith and for a valuable consideration, of the same real property, or any portion thereof,
 13 where his or her own conveyance shall be first duly recorded.”

14 Neither U.S. Bank nor Caliber had a recorded interest in the subject real property as of
 15 October 6, 2014, when My Home Now filed its Complaint for Quiet Title and Declaratory Relief,
 16 in the first iteration case, against Chase. Neither U.S. Bank, nor HUD its predecessor in interest,
 17 sought to challenge the stipulation or the Glowing Ember #1 litigation. Any standing arising from
 18 the September 2015 purported assignments was extinguished in the Glowing Ember #1 proceedings,
 19 which were dispositive of Chase’s interest, inclusive of its “beneficial interest”. Chase’s “interest”
 20 did not survive the Glowing Ember # 1 litigation and, consequently, neither U.S. Bank nor Caliber
 21 have standing under Glowing Ember #2.

22 F. **Defendants, each of them, Caused My Home Now to Prosecute the Instant**
Litigation, Warranting Attorneys’ Fees and My Home Now is Entitled to
Summary Judgment.

23 A district court may award attorney fees as special damages, in a slander of title case, when
 24 a litigant seeks to remove a cloud upon title. In *Horgan v. Felton*, 170 P. 3d 982 (Nev. 2007), the



1 Nevada Supreme Court affirmed its holding in *Sandy Valley Assocs. v. Sky Ranch Estates*, 35 P.3d
 2 964 (Nev. 2001) holding that attorney fees as damages must be specially pleaded under NRCP 9(g).
 3 The Court acknowledged that the cases cited by *Sandy Valley* for the proposition that attorney fees
 4 must be specially pleaded do not directly address NRCP 9(g) and when attorney fees must be
 5 specially pleaded under this rule. See *International Indus. v. United Mtg. Co.*, 96 Nev. 150, 606
 6 P.2d 163 (1980) (holding that when a lessor did not recover compensatory damages nor attorney
 7 fees as damages, an award of attorney fees was improper); *City of Las Vegas v. Cragin Industries*,
 8 86 Nev. 933, 478 P.2d 585 (1970) (award of attorney fees not proper when the complaint only
 9 alleged the necessity for the services of counsel and simply requested attorney fees); *Brown v.*
 10 *Jones*, 5 Nev. 374 (1870) (complaint must allege with distinctness fees resulting only from
 11 dissolution of injunction).

12 However, the plain language of NRCP 9(g) requires that “[w]hen items of special damages
 13 are claimed, they shall be specifically stated. See also *Conservative Club of Washington v.*
 14 *Finkelstein*, 738 F.Supp. 6 (D.D.C.1990). Since attorney fees are items of special damages in a
 15 slander of title case, it follows that they must be specially pleaded under NRCP 9(g), as My Home
 16 has done.

17 For the foregoing reasons, summary judgment is warranted in favor of Plaintiff, My Home
 18 Now, and against Defendants, Chase, U.S. Bank and Caliber, as to the Fourth Claim for Relief, set
 19 forth in the First Amended Complaint for Quiet Title and Declaratory Relief.

20 WHEREFORE, Plaintiffs, hereby, prays that this Court grant summary judgment as to each
 21 count of Plaintiff, MY HOME NOW'S, First Amended Complaint for Quiet Title and Declaratory
 22 Relief, as follows:

23 1. Enter summary judgment on Plaintiff's First Claim for Relief declaring that Plaintiff,

24 MY HOME NOW, LLC is the rightful owner of property located at 7555 Glowing



1 Ember Court, Unit 101, Las Vegas, Nevada 89130, APN 125-27-219-013 ("subject real
2 property"), subject to a Deed of Trust, in favor of Metlife Home Loans, division of
3 Metlife Bank, N.A., duly recorded on September 24, 2008, in the Official Records the
4 Clark County Recorder, pursuant to Instrument No. 20080918:05561;

5

6 2. Enter an Order directing Defendant, U.S. BANK TRUST, N.A. to release the Lis
7 Pendens (ECF No. 25) recorded against the subject real property;

8 3. Enter summary judgment on Plaintiff's Second Claim for Relief for Slander of Title,
9 against Defendants, JP MORGAN CHASE, N.A., U.S. BANK TRUST, N.A. and
10 CALIBER HOME LOANS;

11 4. Enter summary judgment on Plaintiff's Third Claim for Relief for Breach, against
12 Defendant, JP MORGAN CHASE, N.A.;

13 5. Enter summary judgment on Plaintiff's Fourth Claim for Relief for Attorneys' Fees,
14 against Defendants, JP MORGAN CHASE, N.A., U.S. BANK TRUST, N.A. and
15 CALIBER HOME LOANS, as special damages, pled and incurred the prosecution of
16 to remove a cloud upon title;

17 6. For such general and special damages, subject to prove up;

18 7. For punitive damages, subject to prove up;

19 8. For such other attorney's fees as special damages, subject to prove up;

20 9. For such other attorney's fees, as allowed by statute or rule, subject to prove up;

21 10. For all such other relief as is just and proper in the premises.

22 DATED this 29th day of March, 2017.

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1
2 **CERTIFICATE OF SERVICE**
3

4 I HEREBY CERTIFY that on the 29th day of March, 2017, I electronically filed the
5 **MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S SECOND AMENDED**
6 **COMPLAINT [ECF#59]** using the CM/ECF system, which will cause the document to be served
7 upon the following counsel of record::

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